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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 327

A. F. RAWLINGS, RECEIVER OF THE LEE COUNTY NATIONAL BANK, MARIANNA, ARKANSAS, PETITIONER,

vs.

MRS. ELLA M. RAY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 12, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

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[fol. 1]

IN DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS

No. H-8. At Law

E. B. FUTRALL, Receiver of the Lee County National Bank, Plaintiff,

vs.

MRS. ELLA M. RAY, Defendant

COMPLAINT—Filed December 7, 1938

Comes E. B. Futrall, as Receiver of the Lee County National Bank, by his attorney, John C. Sheffield, and states:

That heretofore on or about March 6, 1933, the Lee County National Bank of Marianna, Arkansas, being then and there a banking corporation duly organized and existing under the banking laws of the United States of America, and having its office and principal place of business in the city of Marianna, Lee County, Arkansas, was suspended, and subsequently, declared insolvent by the Comptroller of the Currency of the United States. That on May 1, 1934, the Comptroller of the Currency in accordance with the provisions of the Act of Congress of June 30, 1876, "An Act authorizing the Appointment of Receivers of National Banks, and for other purposes," did appoint A. F. Callaway as Receiver of said banking institution; the said A. F. Callaway being subsequently succeeded by E. B. Futrall, who is now the duly appointed, qualified and acting Receiver of said Lee County National Bank and has taken possession of all the assets thereof.

That on the date of the said suspension of the said Lee County National Bank, the said defendant was the owner of 26⅔ shares of capital stock of said banking corporation, of the par value of $100.00 per share, which said capital stock was issued to her as follows, to-wit:

Certificate No. ..... for ..... shares, dated ....., that on

[fol. 2] July 6, 1934, the said Comptroller of the Currency of the United States determined that it was necessary to levy an assessment of fifty per cent against each of the

stockholders of said corporation for each share held by each of them, and to enforce such liability, did on said date, levy such assessment to the extent of fifty per cent to be paid by each of said stockholders on each share held by each of them, on or before the said suspension of said bank and did then make a demand on the defendant and on each and all of the stockholders of said corporation to pay the same on or before August 13, 1934, after which time, the said amount would bear interest at the rate of six per cent per annum and did then and there direct, and has since directed the plaintiff, as such Receiver to take all the necessary proceedings, by suit or otherwise, to enforce said stock assessment. A copy of said assessment and demand is attached hereto.

That on November 6, 1935, the said Comptroller of the Currency of the United States determined that it was necessary to levy an assessment of fifty per cent against each of the stockholders of said corporation for each share held by each of them on or before the said suspension of said bank and did then make a demand on the defendant, and on each and all the stockholders of said corporation, to pay the same on or before December 13, 1935, after which time the said amount should bear interest at the rate of six per cent per annum and did then and there direct and has since directed the plaintiff, as such receiver to take all the necessary proceedings, by suit or otherwise, to enforce said stock assessment. A copy of said assessment and demand is attached hereto.

By virtue of such assessment and order and the Acts of Congress in such cases made and provided, the defendant, Ella M. Ray, became indebted to this plaintiff in the sum of $2666.66, together with interest at the rate of six per cent per annum on the amount of $1,333.33 from August 13, 1934, until paid, and interest at the rate of six per cent per annum on the amount of $1,333.33, from December 13, 1935, until paid, no part of which has been paid or collected, and that said defendant is now justly indebted to plaintiff in the aforesaid sum.

[fol. 3] Wherefore: plaintiff, E. B. Futrall, Receiver of the said Lee County National Bank of Marianna, Arkansas, insolvent, prays that he may have judgment against the defendant, Ella M. Ray, in the sum of $2,666.66, together with interest at the rate of six per cent per annum on the amount of $1,333.33 from August 13, 1934, and also interest

at the rate of six per cent per annum on the amount of $1,333.33 from December 13, 1935, together with all his costs in this action expended, and for all other proper general and equitable relief.

John C. Sheffield, Attorney for plaintiff.

WAIVER OF SERVICE AND ENTRY OF APPEARANCE BY DEFENDANT

Jesse B. Daggett, duly sworn on oath, deposes and states:

I am the attorney for Mrs. Ella M. Ray, and I am duly authorized to waive the service and enter the appearance of the said Mrs. Ella M. Ray, and I do by this instrument waive the service and enter the appearance of the said defendant.

Jesse B. Daggett.

Subscribed and sworn to before me, a Notary Public, on this 2nd day of December, 1938. Cloreece Wilmet, Notary Public. My commission expires: Sept. 2, 1941. (Notarial Seal.)

NOTICE OF ASSESSMENT

Office of the Receiver

The Lee County National Bank of Marianna, Arkansas, Marianna, Arkansas

Marianna, Ark., July 9, 1934.

You Will Please Take Notice, That the Comptroller of Currency has on July 6, 1934, levied an assessment upon the shareholders of The Lee County National Bank of Marianna, Marianna, Ark., on the par value of each and every share, payable at the office of the Receiver, on or before the 13th day of August, 1934.

The Receiver is, however, authorized by the Comptroller to grant an extension without interest to shareholders who [fol. 4] pay 25 per centum of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed, to pay 25 per centum additional, on or before September 13, 1934; 25 per centum additional on or

before October 13, 1934; and the remaining 25 per centum on or before November 13, 1934.

Deferred Payments will bear interest after August 13, 1934, at the legal rate in the State of Arkansas, except that the interest may be abated in the case of any shareholder who pays one-fourth of his assessment on or before August 13, 1934, and who pays the remaining installments on or before the dates at which they mature under the terms of this extension.

You are therefore required to pay the assessment of Fifty (50) per centum on the par value of 26⅔ shares of stock standing in your name in accordance with the foregoing order and this notice. Your prompt compliance will be of great benefit to the creditors of this trust and advance materially its liquidation.

A. F. Callaway, Receiver, The Lee County National Bank, of Marianna, Marianna, Arkansas.

To Ella M. Ray, 515 N. McClain, Memphis, Tennessee.

Note—Make all checks payable to the order of A. F. Callaway, Receiver.

(See Inside)

ASSESSMENT UPON SHAREHOLDERS

Treasury Department

Office of The Comptroller of Currency

No. 10854

In the Matter of The Lee County National Bank of Marianna, Marianna, Arkansas

Washington, D. C., July 6, 1934.

[fol. 5] To All Whom It May Concern:

Whereas, upon a proper accounting by the receiver heretofore appointed to collect the assets of The Lee County National Bank Of Marianna, Marianna, Arkansas, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the

individual liability of the stockholders therefore to the extent hereinafter mentioned as prescribed by Section 5151 and 5234 of the Revised Statutes of the United States, Section 1c 156, Act of June 30, 1876, and Section 23, Act approved December 23, 1913 known as Federal Reserve Act.

Now, Therefore, by virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said "The Lee County National Bank of Marianna", for Forty Thousand ($40,000.00) dollars, to be paid by them on or before the 13th day of August, 1934, and I hereby make demand on each and every one of them for fifty per cent of the par value of each and every share of the capital stock of said association held or owned by them, respectively at the time of its failure; and I hereby direct A. F. Callaway, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the shareholders.

In Witness Whereof I have hereto set my hand and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, this 6th day of July, A. D. 1934.

J. F. T. O'Connor, Comptroller of the Currency.
(Seal.)

NOTICE OF ADDITIONAL ASSESSMENT

File Number 2883

Office of the Receiver

The Lee County National Bank of Marianna, Arkansas

Marianna, Arkansas,
November 6, 1935.

You Will Please Take Notice, That the Comptroller of the Currency has on November 6, 1935 levied an additional [fol. 6] assessment upon the shareholders of the Lee County National Bank of Marianna, Arkansas of fifty per cent of the par value of each and every share payable at the office of the Receiver, on or before December 13, 1935.

The Receiver is, however, authorized by the Comptroller to grant an extension without interest to Shareholders who

pay 25 per centum of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed, to pay 25 per centum additional on or before January 13, 1936, 25 per centum additional on or before February 13, 1936, and the remaining 25 per centum on or before March 13, 1936.

Deferred payments will bear interest after December 13, 1935 at the legal rate in the State of Arkansas, except that interest may be abated in the case of any shareholder who pays one fourth of his assessment on or before December 13, 1935, and who pays the remaining installments on or before the dates at which they mature under the terms of this extension.

You are therefore required to pay the assessment on the 26⅔ shares of stock standing in your name in accordance with the foregoing order and this notice. Your prompt compliance will be of great benefit to creditors of this trust and advance materially its liquidation.

A. F. Callaway, Receiver, The Lee County National Bank of Marianna, Arkansas.

To Ella M. Ray, 515 N. McClain, Memphis, Tennessee.

ASSESSMENT UPON SHAREHOLDERS

Treasury Department

Office of the Comptroller of the Currency,

Washington, D. C.

November 6, 1935.

No. 10854

In the Matter of The Lee County National Bank of Marianna, Arkansas

[fol. 7] To All Whom It May Concern:

Whereas, upon a proper accounting by the Receiver heretofore appointed to collect the assets of "The Lee County National Bank Of Marianna," Arkansas, and upon a valuation of the uncollected assets remaining in his hands on the Twenty-first day of June, 1934, it appeared to the satis-

faction of the Comptroller of the Currency that in order to pay the debts of such association it would be necessary to enforce the individual liability of the stockholders thereof to the extent of Forty Thousand Dollars, as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States; Section lc 156, Act of June 30, 1876, and Section 23, Act approved December 23, 1913, known as the Federal Reserve Act.

And Whereas, upon a further accounting by the Receiver, it appears to my satisfaction that the sum of Forty Thousand Dollars was inadequate, and that, in order to pay the debts of said association it is necessary to further enforce the individual liability of the stockholders to the extent hereinafter mentioned, as provided by said Sections 5151 and 5234 of the Revised Statutes of the United States; Section lc, 156, Act of June 30, 1876, and Section 23, Act Approved December 23, 1913, known as the Federal Reserve Act.

Now, Therefore, by virtue of the authority vested in me by law, I do hereby make a further assessment and requisition upon the shareholders of the said The Lee County National Bank Of Marianna, for Forty Thousand Dollars, to be paid by them ratably on or before the Thirteenth day of December, 1935, and I hereby make demand upon each and every one of them for an additional fifty per cent of the par value of each and every share of the capital stock of said association owned by them, respectively, at the time of its failure; and I hereby direct A. F. Callaway, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

[fol. 8] In Witness Whereof, I have hereto set my hand and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, this Sixth day of November, A. D. 1935.

J. F. T. O'Connor, Comptroller of the Currency.

(Seal.)

IN UNITED STATES DISTRICT COURT

ANSWER—Filed March 15, 1939

Comes Mrs. Ella M. Ray, defendant herein, and for answer to the complaint of the plaintiff herein, states:

1

She admits all the allegations of the complaint.

2

The right of action set forth in the complaint did not accrue within three years next before the commencement of this action and the same is barred by the statute of Limitations and this defendant expressly pleads the statute of limitations of the State of Arkansas, especially section 8928 of Pope's Digest of the statutes of the State of Arkansas, as a complete bar to the right of the plaintiff to maintain this action and recover herein.

Wherefore, premises considered, defendant prays that the cause against her be dismissed, that she have judgment for all costs herein expended and for all other proper and legal relief.

Respectfully Submitted, Daggett & Daggett, per J. B. Daggett, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

[fol. 9] No. H-8

E. B. FUTRALL, Receiver,

vs.

ELLA M. RAY

JUDGMENT—Filed October 4, 1939

This cause coming on to be heard this 4th day of October, 1939, upon the bill of complaint, and the answer and plea of the statute of limitations against the cause of action alleged in the complaint, and having been argued by counsel, and the Court being fully advised in the premises, it is

ordered, adjudged and decreed that said plea of the statute of limitations is well taken, and is hereby sustained, and the bill of complaint herein be, and the same is hereby dismissed with costs to the defendant to be taxed.

Harry J. Lemley, District Judge.

IN UNITED STATES DISTRICT COURT

REQUEST OF PLAINTIFF FOR CONCLUSIONS OF LAW—Filed December 6, 1939

The plaintiff, by his attorney, John C. Sheffield, requests the Court to make the following conclusions of law.

1. That the Statute of Limitations of the State of Arkansas does not apply to [the] and is not a bar to the right of the plaintiff to recover on the assessment levied by the Comptroller of the Currency on November 6, 1935, to be paid December 13, 1935.

2. That the Statute of Limitations begins to run from December 13, 1935, being the date fixed by the Comptroller of the Currency for the payment of the assessment levied November 6, 1935.

3. That the defendant, Ella M. Ray, having admitted all the allegations of the plaintiff's complaint, the plaintiff is entitled to judgment as prayed for the amount of $1,333.33 being the amount of the second assessment with interest at [fol. 10] the rate of six per cent per annum on the amount of $1,333.33 from December 13, 1935, until paid.

E. B. Futrall, Receiver of the Lee County National Bank, by John C. Sheffield, Attorney for the Trust.

IN UNITED STATES DISTRICT COURT

CONCLUSIONS OF LAW BY COURT—Filed December 11, 1939

The Court doth declare the law herein as follows:

The facts alleged in the complaint are admitted. The cause of action alleged in the Complaint is governed by the three year statute of limitations, section 8928, Pope's Digest

of the Statutes of Arkansas, and the complaint not having been filed within three years from the date of the levy of the assessment by the Comptroller, the defendant's plea of the statute of limitations should be sustained and the complaint dismissed.

Harry J. Lemley, District Judge.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed December 6, 1939

Notice is hereby given that E. B. Futrall, as Receiver of the Lee County National Bank, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit, from the final judgment entered in this action on the 4th day of October, 1939.

John C. Sheffield, Attorney for E. B. Futrall, Receiver of the Lee County National Bank.

Service of this notice of appeal acknowledged on this 7th day of December, 1939.

J. B. Daggett, Attorney for Mrs. Ella M. Ray, Defendant.

[fol. 11] IN UNITED STATES DISTRICT COURT

DESIGNATION OF POINTS ON WHICH PLAINTIFF RELIES—Filed December 6, 1939

The plaintiff, E. B. Futrall, as Receiver of the Lee County National Bank, by his attorney, John C. Sheffield, designates the following points on which he relies to reverse the judgment of the Court herein:

1. The Court erred in holding that the Statute of Limitations of the State of Arkansas, and particularly Section 8928 of Pope's Digest of the Statutes of Arkansas, bar a recovery of the assessment made by the Comptroller of the Currency on November 6, 1935, to be paid December 13, 1935.

2. The Court erred in holding that the statute of Limitations began to run on the day the assessment was made,

that is on November 6, 1935, instead of holding that the Statute began to run on the day the assessment was made payable by the Comptroller of the Currency, or December 13, 1935.

Wherefore, for these errors, and each of them, the plaintiff prays that the judgment be reversed and that this cause be remanded with instructions to the Court below to enter judgment for the plaintiff for the amount of the assessment levied November 6, 1935.

John C. Sheffield, Attorney for E. B. Futrall, As Receiver of the Lee County National Bank.

IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD ON APPEAL—Filed December 6, 1939

To The Clerk:

You will please include in the record on appeal, the following:

1. Complaint,
2. Answer of the defendant,
3. Judgment,
4. Request of plaintiff for conclusions of law,
5. Conclusions of law by Court,
6. Notice of Appeal,

[fol. 12] 7. Designation of points on which Plaintiff relies,

8. Designation of Record on Appeal.

John C. Sheffield, Attorney for E. B. Futrall, Receiver of the Lee County National Bank.

Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 13] And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellant.)

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 11653

E. B. FUTRALL, as Receiver of the Lee County National Bank, Appellant,

vs.

MRS. ELLA M. RAY

The Clerk will enter my appearance as Counsel for the Appellant.

John C. Sheffield.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Jan. 8, 1940.

(Appearance of Mr. J. B. Daggett as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

Daggett & Daggett. J. B. Daggett.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Jan. 10, 1940.

[fol. 14] (ORDER OF SUBMISSION)

March Term, 1940

Wednesday, March 20, 1940

This cause having been called for hearing in its regular order the same was argued by Mr. John C. Sheffield for appellant and by Mr. J. B. Daggett for appellee.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 15] (OPINION)

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 11,653—May Term, A. D. 1940

E. B. FUTRALL, Receiver of the Lee County National Bank, Appellant,

vs.

MRS. ELLA M. RAY, Appellee

Appeal from the District Court of the United States for the Eastern District of Arkansas

[May 13, 1940]

Mr. John C. Sheffield for Appellant.

Mr. J. B. Daggett (Messrs. Daggett & Daggett and Mr. C. E. Daggett were with him on the brief) for Appellee.

Before Gardner, Sanborn and Woodrough, Circuit Judges

GARDNER, Circuit Judge, delivered the opinion of the Court.

This was an action brought by appellant as receiver of the Lee County National Bank, appointed by the Comptroller of the Currency, to recover an assessment made by the Comptroller of the Currency on the capital stock owned [fol. 16] by the appellee in a closed national bank. The parties will be referred to as they appeared below.

Plaintiff's complaint was in conventional form, but there was attached to it as an exhibit the order made by the Comptroller of the Currency levying the assessment. The answer admitted all the allegations of the complaint and pleaded the three year Arkansas Statute of Limitations. The lower court sustained the plea, and entered judgment of dismissal, and plaintiff has appealed.

An extended statement of facts would seem to be unnecessary because it is admitted that the only question involved is whether the Statute of Limitations began to run from November 6, 1935, the date the assessment was levied, or whether it did not begin to run until December 13, 1935, the date fixed by the Comptroller in his order for the payment of the assessment. There is no controversy about the

applicable statute. Futrall v. Branson, 8 Cir., 104 F. 2d 409.

The lower court held that the cause of action accrued on the date of the levying of the assessment, and hence, was barred by the three year Arkansas Statute of Limitations. There is no doubt that the liability of a stockholder in a national bank does not accrue until the assessment has been made by the Comptroller of the Currency. There were two assessments made by the Comptroller, the first bearing date July 6, 1934, for fifty per cent of the par value, and the second bearing date November 6, 1935, for an additional fifty per cent of the par value of the capital stock. It is admitted that the action to recover the first assessment is barred by the Statute of Limitations under the authority of Futrall v. Branson, supra. The order of assessment here under consideration, which was dated November 6, 1935, embodied a statement that the assessment made was "to be paid by them ratably on or before the 13th day of December, 1935, and I hereby make demand upon each and every one of them (the stockholders) [fol. 17] for an additional fifty per cent of the par value of each and every share of the capital stock of said association owned by them, respectively, at the time of its failure; and I hereby direct A. F. Callaway, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders."

It is the contention of plaintiff that the cause of action which came into existence with the entry of this order of assessment did not accrue until December 13, 1935, the date named by the Comptroller as the time for payment of the assessment. It is conceded that if the statute did not begin to run until December 13, 1935, then the action was not barred; but that if it began to run on November 6, 1935, the date of making the assessment, then it was barred. The Statute of Limitations began to run from the time the cause of action accrued, and this, we think, was the date on which the assessment was made. Pufahl v. Estate of Parks, 299 U. S. 217; Armstrong v. McAdams, 8 Cir., 46 F. 2d 931; Coffey v. Fisher, 6 Cir., 100 F. 2d 51.

In Armstrong v. McAdams, supra, this identical question was before us. It is urged, however, by plaintiff that there was no statement in the assessment there considered of a future payable date, and that the levy on its face was made

payable immediately. While the opinion does not disclose the wording of the order, a reference to the original record discloses that, as in the case at bar, the order of assessment fixed a date for payment. The assessment was dated August 10, 1926, but was by the order required to be paid on or before November 16, 1926. This court there said:

"The cause of action accrued August 10, 1926, the date the assessment was made by the Comptroller of the Currency. Suit was therefore instituted more than three years after the cause of action accrued * * *."

[fol. 18] But we think the question has been definitely put to rest by the decision of the Supreme Court in Pufahl v. Estate of Parks, supra. In the course of the opinion in that case it is said:

"The liability is imposed by the statute. The original subscriber and likewise an immediate or remote vendee of the shares assumes a status,—that of stockholder. The assumption of this status involves whatever conditions or burdens the federal statutes have imposed as incident to the holding of national bank shares. The contingent obligation to pay an assessment is rendered absolute by the Comptroller's action in ordering one; whether that action be taken during the stockholder's life or after his death. *From the moment of the Comptroller's order for assessment the bank's receiver has a claim which would support an action of debt at common law against a living stockholder, or the executor of a deceased stockholder.* (Italics supplied.)"

The act of the Comptroller in fixing some future date for payment was not specifically authorized by the statute, but was an act of grace or courtesy voluntarily extended by him. It amounted to no more than a statement that while the assessment was due, he would not enforce it until a later date. Many of the authorities cited by plaintiff holding that the Statute of Limitations commences to run on the date on which the Comptroller makes the assessment payable, were decided prior to Pufahl v. Estate of Parks, supra, and many of them arose out of court receiverships under a prior statute, and in many of them the question of the Statute of Limitations was not considered. Strasburger v. Schram, C. A. D. C., 93 F. 2d 246, is in point, and is contrary to the conclusion reached by this court in Armstrong v. McAdams,

supra. The decision, while entitled to great respect is not of such persuasive character as to cause us to depart from our former decision. The opinion in that case makes no mention of the decision of the Supreme Court in Pufahl v. [fol. 19] Estate of Parks, supra. In the recent case of Coffey v. Fisher, supra, the Sixth Circuit considered this question. In the course of the opinion the court said:

"We recognize that there are decisions supporting his contention but the last pronouncement of the Supreme Court is to the contrary."

The court then cites Pufahl v. Estate of Parks, supra, and quotes from it the portion which we have already quoted in this opinion. The Coffey case involved the question of an extension of time of payment granted by the Comptroller. The court, in referring to the effect of such extension, said:

"While the extensions were acts of grace to unfortunate stockholders, and made here, as stated in the declaration, at their request, through their committee and for their convenience, nevertheless they do not for that reason toll the statute."

As the making of the assessment fixed the liability of the stockholders, the cause of action immediately accrued, and the act of the Comptroller purporting to extend the time for payment did not toll the statute. Donald v. Bird, 9 Cir., 85 F. 2d 663; Drain v. Stough, 9 Cir., 61 F. 2d 668; Johnson v. Greene, 9 Cir., 88 F. 2d 683; Rankin v. Barton, 199 U. S. 228.

The judgment appealed from is therefore Affirmed.

[fol. 20] (JUDGMENT)

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
MAY TERM, 1940

Monday, May 13, 1940

No. 11653

E. B. FUTRALL, Receiver of the Lee County National Bank,
Appellant,

vs.

MRS. ELLA M. RAY

Appeal from the District Court of the United States for the Eastern District of Arkansas

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that Mrs. Ella M. Ray have and recover against E. B. Futrall, Receiver of the Lee County National Bank, the sum of Twenty Dollars for her costs herein and have execution therefor.

May 13, 1940.

[fol. 21] (CLERK'S CERTIFICATE)

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Arkansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions,

titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein E. B. Futrall, Receiver of the Lee County National Bank, was Appellant and Mrs. Ella M. Ray was Appellee, No. 11653, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the seventh day of June, A. D. 1940, a mandate was issued out of said Circuit Court of Appeals directed to the Judges of the District Court of the United States for the Eastern District of Arkansas.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-sixth day of August, A. D. 1940.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal.)

[fol. 22] Supreme Court of the United States

Order Allowing Certiorari—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 44,676. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 327. A. F. Rawlings, Receiver of The Lee County National Bank, Marianna, Arkansas, Petitioner, vs. Mrs. Ella M. Ray. Petition for a writ of certiorari and exhibit thereto. Filed August 12, 1940. Term No. 327, O. T., 1940.